

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

CHAMBERS OF
MICHAEL A. SHIPP
UNITED STATES DISTRICT JUDGE

CLARKSON S. FISHER FEDERAL
BUILDING & U.S. COURTHOUSE
402 EAST STATE STREET
TRENTON, N.J. 08608
609-989-2009

LETTER OPINION & ORDER

VIA CM/ECF

All counsel of record

Re: *United States v. Rao Desu*
Crim. No. 18-613 (MAS)

Dear Counsel:

This matter comes before the Court upon Defendant's Emergency Motion to Continue Defendant's Surrender Date. (ECF No. 180.) The Government opposed Defendant's Motion. (ECF No. 181.)

I. DEFENDANT'S POSITION

Defendant's Motion requests a sixty-day stay of the surrender date "to allow additional time for the pandemic to subside before he is required to report to FCI Fort Dix." (Def.'s Moving Letter 1, ECF No. 180.) Defendant argues:

The state has still not reached its goals of achieving full vaccination for 70% of the population, which would be a significant milestone on the path towards herd immunity. . . . The State anticipates that will occur in approximately 60 days, which informs the length of the requested stay. In light of the length of Mr. Desu's sentence of 30 months, 60 additional days before he is required to surrender would not materially change the punitive impact of his sentence, and would go a long way toward protecting Mr. Desu's health.

(*Id.*)

II. DISCUSSION

The Court acknowledges that Defendant has health conditions and is understandably apprehensive about his imminent surrender date, as reflected in his recent motions before the Undersigned and the United States Court of Appeals for the Third Circuit. Nevertheless, Defendant has failed to demonstrate good cause to stay the surrender date.

Defendant now argues that a sixty-day stay of his reporting date "would go a long way toward protecting [his] health." (Def.'s Moving Br. 1.) In support of his Motion for a Sentence

Reduction, however, Defendant argued that “a large percentage of prisoners and correctional officers have been refusing to be vaccinated.” (Def.’s Sentence Reduction Moving Br. 6-7, ECF No. 170.) Defendant also argued that he would “be vulnerable to infection from COVID-19 in a prison setting for the foreseeable future because substantial numbers of prison guards, staff and inmates at Fort Dix and correctional facilities around the country are refusing the vaccine.” (*Id.* at 23.) Defendant’s most recent argument regarding the vaccination of New Jersey’s general population is not at all persuasive in light of Defendant’s previous arguments regarding Fort Dix, which the Court already considered.¹ Moreover, the State of New Jersey has been continuing to reopen. To that end, Governor Murphy recently announced that New Jersey is scheduled to drop most COVID restrictions as of May 19, 2021. *See Brett & Johnson, N.J. to Drop Most COVID Restrictions May 19*, N.J.com (May 5, 2021), <https://www.nj.com/coronavirus/2021/05/nj-to-drop-most-covid-restrictions-may-19-restaurant-indoor-capacity-limits-eliminated-but-social-distancing-rules-remain.html> (last visited May 3, 2021).) According to Governor Murphy, “[t]hese are the most aggressive steps we have taken to reopen to date[.]” *Id.*

In granting Defendant three sixty-day extensions of his surrender date, the Court was sensitive to Mr. Desu’s health conditions and the state of COVID-19 in New Jersey and at FCI Fort Dix, Defendant’s preferred facility.² Here, the docket in this matter reflects that Defendant was originally scheduled to surrender on November 3, 2020. (ECF No. 156.) On October 26, 2020, the Court granted Defendant’s first request for an extension of his surrender date and set a surrender date of January 4, 2021. (ECF No. 157.) On December 9, 2020, the Court granted Defendant’s second request for an extension of his surrender date and set a surrender date of March 5, 2021. (ECF No. 162.) On February 5, 2021, the Court granted Defendant’s third request for an extension of his surrender date and set a surrender date of May 5, 2021. (ECF No. 168.) Defendant subsequently filed his Motion for a Reduction of Sentence, which the Court denied on April 30,

¹ On May 3, 2021, Chad W. Grant, the Supervisory Deputy U.S. Marshal for the District of New Jersey-Trenton, contacted the Fort Dix-Health Services Administrator for updated statistics regarding COVID-19 at FCI Fort Dix. The Fort-Dix Health Services Administrator indicated:

- (1) As of last Friday (April 30th), there are only three active positive COVID cases in Fort Dix.
- (2) Approximately 60% of the staff at Fort Dix are vaccinated. (This does not include staff that received the vaccination outside of Fort Dix as the facility does not track this information.)
- (3) As of the end of March, every then-incarcerated prisoner had been offered some form of COVID-19 vaccination twice.
- (4) Out of a total of 2,817 current inmates, approximately 167 have not been offered a vaccination. This is only due to the constant inflow of inmates coming into Fort Dix from various places.
- (5) Approximately 53% of the current inmates have been vaccinated. This is due to a large number of inmates refusing to receive the vaccination.

The Court notes, however, that its April 30, 2021 decision would stand regardless of this updated information, which was not submitted via Affidavit or Certification.

² During his sentencing hearing, Defendant’s counsel indicated that, “If [Y]our Honor does not see fit to allow [Mr. Desu] to serve it in home confinement, Mr. Desu’s first choice, if the Court is willing to make a recommendation—although I know the Court cannot bind the [BOP], if the Court would be willing to make a recommendation of Fort Dix, New Jersey, [Defendant] would be grateful for that.” (Sentencing Tr. 51:4-9.)

2021.³ On Sunday, May 2, 2021, Defendant filed the Emergency Motion to Continue Surrender Date, which is currently at issue before the Court.

On October 21, 2019, a jury found Defendant guilty on six counts of federal tax fraud. (Redacted Verdict Form, ECF No. 88.) On September 23, 2020, this Court sentenced Defendant. The Court previously granted Defendant three extensions of his surrender date, totaling 180 days' worth of extensions, and hereby finds that the interests of justice require Defendant to surrender to FCI Fort Dix as scheduled on May 5, 2021. After careful consideration of Defendant's most recent request, the Court finds that Defendant has failed to demonstrate good cause to stay the surrender date any further.

III. ORDER

Based on the foregoing,

IT IS on this 3rd day of May 2021, **ORDERED** that:

1. Defendant's Emergency Motion to Continue Surrender Date (ECF No. 180) is denied.
2. Defendant must surrender as scheduled on May 5, 2021.



MICHAEL A. SHIPP
UNITED STATES DISTRICT JUDGE

³ In its April 30, 2021 decision, the Court found that "reducing Defendant's sentence when Defendant has not served a single day of incarceration would not properly 'reflect the seriousness of the offense,' 'promote respect for the law,' 'provide just punishment for the offense[.],' or 'afford adequate deterrence to criminal conduct[.]'" (Apr. 30, 2021 Letter Op. & Order, ECF No. 179 (citing 18 U.S.C. § 3553(a).))